



CANNABIS CONTROL APPEALS PANEL

GOVERNOR GAVIN NEWSOM

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
Secretary Lourdes M. Castro Ramirez



Open Session Meeting Minutes

Thursday, February 9, 2023
1:33 pm – 2:02 pm

Cannabis Control Appeals Panel
400 R Street
Sacramento, CA 95811

Members present via teleconference:

- Dr. Diandra Bremond, Chairperson (in Los Angeles County)
- Sharon-Frances Moore, J.D. (in San Diego County)
- Majority Leader Ian Calderon (in Orange County)

Staff present via teleconference:

- Anne Hawley, Executive Director, Cannabis Control Appeals Panel
- Christopher Phillips, Chief Counsel, Cannabis Control Appeals Panel
- Sarah M. Smith, Senior Staff Attorney, Cannabis Control Appeals Panel
- Brian Hwang, Staff Attorney, Cannabis Control Appeals Panel
- Melita Deci, Administrative and Business Services Coordinator, Cannabis Control Appeals Panel

Summary:

1. Call to Order and Establishment of Quorum.

Chairperson Diandra Bremond called the teleconference meeting to order at 1:33 pm.

Melita Deci took the roll call vote. Panel Members Diandra Bremond, Sharon-Frances Moore, and Ian Calderon were present. A quorum was established.

2. Approval of October 17, 2022 Meeting Minutes.

Chairperson Bremond asked the Panel if there were any additions or corrections to the minutes of the October 17, 2022 meeting. There were no additions or corrections. No comments from the public.

Motion (Moore): Approve the minutes of the October 17, 2022 meeting as submitted. Seconded (Calderon). Melita Deci took a roll call vote on the motion. Motion passed 3-0.

3. Executive Management Report.

Executive Director Anne Hawley presented the Executive Management Report. Hawley began by thanking Abby Ridge, who is the Administrative and Legislative Analyst for the California Commission on Disability Access. She is providing IT support for the Panel meeting today.

Hawley's report will provide an update on (1) the Panel's financial health and (2) the implementation of the Panel's strategic plan.

First, Hawley discussed the CCAP budget. CCAP's budget is divided into two segments – personal services and operating expenses. The conservative projection is that CCAP will have about \$417,000 remaining for personal services at end of the year. This surplus is due to vacancies in staff positions as well as two unfilled spots on the Panel.

Hawley then moved onto operating expenses, starting off with general expenses. General expenses include items such as office supplies, subscriptions, and bar fees. Hawley noted that if this line item needs additional funding, CCAP can pull from other budget line items. Currently, there is \$54 remaining on this budget line item.

Printing category includes copier rental supplies, graphic services, outreach for brochures, etc. This spending category is still being processed. Cell phones and related services cost around \$9,800. CalNET – which is part of the internet package – is roughly \$1,900.

For the travel category, travel is expected to increase because of the expiration of AB-1733, which allows boards, bureaus, and commissions to hold meetings via teleconference. This bill will expire on July 1, 2023 unless renewed by the Legislature. So far, CCAP staff's outreach efforts have been conducted via teleconference and have not included in-person presentations, but this may change in the future. For facilities operation, this includes rent and security for the building.

For consultant and professional services, they include internal and external transactions. Internal services are provided through interagency agreements with other state agencies. When these expenses are processed, payments will go to the Department of General Services (Office of Human Resources), the Business, Consumer Services and Housing Agency, the Department of Consumer Affairs ("DCA") (for IT support), and DCA again for the new multimedia contract (which is a one-time contract).

For consultant and professional services that are external, incurred costs will go toward annual subscriptions (e.g., web-based legal research tools, translation services for the website, interpreters for hearings, auditing fees for IT audits conducted by the California Military Department).

The Information Technology category includes CCAP's case management system annual subscription (\$60,000) along with internet and cable services. The budget for this category will be increased to \$71,000 next year.

Overall, CCAP is budgeted at \$3,302,000 for personal services and operating expenses combined. Through the first two quarters, CCAP has spent a little over \$1,000,000 with about \$2,344,000 remaining. This includes the \$43,000 reimbursement from the Alcoholic Beverage Control Appeals Board. For the rest of the fiscal year, CCAP is projected to remain under budget because of the lower-than-expected cost for personal services.

Next, Hawley transitioned to discuss the implementation of the Panel's Strategic Plan. As a reminder, Strategic Goal #2 is to provide education on the appeals process for cannabis stakeholders. This week, CCAP completed an interagency agreement with DCA to assist CCAP with multimedia content for outreach and education. Hawley thanked Staff Attorney Brian Hwang, who created the content for these educational materials, as well as Administrative and Business Services Coordinator Melita Deci for executing the interagency agreement. Under the agreement:

- DCA will provide voiceover and audio for seven instructional PowerPoint videos that will educate cannabis stakeholders, appellants, and legal counsel on topics such as briefs, final decisions, Forms 6003 and 6005, jurisdiction, motions, oral argument, etc. These videos will be self-paced and will be housed on CCAP's website and YouTube channel.
- DCA will also provide technical expertise to develop two Public Service Announcements that will be published on CCAP's website and YouTube channel. These PSAs will be 30 seconds to one minute in length, and will educate the public on CCAP's mission and how to go about filing an appeal. The PSAs will feature b-roll, stock images, and CCAP website content.
- Timeline: Script development will begin in March 2023, filming will begin in April, and the editing process will begin in May. The final product is tentatively scheduled to be delivered to CCAP no later than the end of August.

Hawley also provided an update on Strategic Goal #1, which is ensuring that appeals from the decisions of the Department of Cannabis Control are resolved in a fair and timely manner. One of the objectives under this goal is to provide impartial decision making and fairness to all who come before the Panel. Hawley thanked Chief Counsel Chris Phillips for spearheading the effort to amend Rule 6014 within CCAP's regulations to improve due process and fairness by instituting an automatic stay. Hawley thanked the legal staff as a whole – Phillips, Senior Staff Attorney Sarah Smith, and Hwang – for their hard work in the rulemaking process.

Hawley also spoke about the work being done in another objective under Goal #1 – to identify and develop trainings for Panel members to provide a solid foundation on decision making. Under the direction of Phillips, Hwang has completed creating the internal training content on 16 topics which include, but are not limited to, the administrative hearing process, burden of proof, and Panel recusal.

In wrapping up, Hawley thanked the entire CCAP staff for their team effort in implementing the Panel's Strategic Plan. There will be more updates provided at the Panel meeting in March. Hawley completed her presentation and returned the floor to Bremond.

No comments from the Panel. No comments from the public.

4. Public Hearing and Possible Action Regarding Proposed Action Item Regulation Amendment to Improve Due Process by Instituting Automatic Stay.

Before handing the floor to Chief Counsel Phillips, Bremond provided background on the rulemaking process. As discussed at previous Panel meetings, this rulemaking package would amend Rule 6014 of the Panel's regulations to improve due process for appellants by introducing an automatic stay.

Chief Counsel Phillips started his report by outlining the next steps in the rulemaking process. Today's purpose is to conduct a public hearing on the proposed regulation amendment. Back in October 2022, the Panel voted to approve the proposed regulatory change to institute an automatic stay and initiate the 45-day public comment period. The approved text from last October can be found in Attachments 1 and 2 to today's hearing materials. Phillips will refer to those documents as the "original approved text." During the 45-day comment period, which closed at the start of today's hearing, staff has taken steps to amplify CCAP's notice of rulemaking to solicit public feedback and comments. For example, Phillips has given presentations at various cannabis bar events and sought public comment from those in attendance.

As a result of these efforts, two public comments were received. First, the International Cannabis Bar Association's ("INCBA") comment expressed wholehearted support of the proposed change from a merit-based stay to an automatic stay. CCAP appreciates INCBA for taking the time to submit their comment.

The other comment came from the Department of Cannabis Control ("DCC") and is substantive in nature. After reviewing the Department's comment, staff has determined the originally approved text (Attachments 1 and 2) can be amended and improved upon. The revised text that staff is now recommending can be found in Attachments 3 and 4 to today's meeting materials. In their comment, DCC applauds the Panel's efforts in providing cannabis licensees and applicants with fair hearings that respect their procedural rights while also ensuring the protection of the public. Their comment also contains suggestions for improvements. The Department commented that the proposed rules should clarify that: (1) the Panel will vacate the stay if the Department makes the required showing of an immediate harm, and (2) the Department's required showing is in the disjunctive (rather than the conjunctive).

Phillips explained the Department's public comment in greater detail. In the *originally* approved text (prior to the Department's comment), the Department would have to show an immediate danger to the health, safety, *and* welfare of the public in order to succeed on their motion to

have the stay vacated. The “and” links all three scenarios together – the health, safety, and welfare of the public. Under this language, the DCC would have to demonstrate an immediate harm in *all* three categories.

In the *revised* version of the approved text, which takes the Department’s suggestion into consideration, the “and” has been changed to an “or.” The “or” breaks up the three situations into distinct scenarios where any one or a combination of them can be used by the DCC to demonstrate immediate danger to the public. Staff believes this is the more appropriate approach because there may be instances where licensee actions pose a true and immediate danger to the public, but only to public safety and not public welfare or health. The other revision proposed by staff adds a sentence to the end of subdivision (b) which clarifies the action the Panel may take as a result of a motion made by the Department. It reads: “After considering the motion and any opposition, the Panel may vacate the stay.”

After any public comment today, the Panel can choose between two versions of the proposed regulation: (1) the *originally* approved text (see Attachments 1 and 2), and (2) the *revised* text (see Attachments 3 and 4).

Phillips then outlined the four options before the Panel:

- First, the Panel can choose to act on the originally approved text (Attachments 1 and 2) by adopting it and then directing staff to continue with finalizing the rulemaking package.
- Second, the Panel can choose to act on the revised text (Attachments 3 and 4) by approving it for a 15-day public comment period. Following the conclusion of that period, at the next Panel hearing, the Panel would be right back to considering the revised text and whether to adopt it before proceeding with the final rulemaking package.
- Third, the Panel can choose to act on the originally approved text by rejecting it to end the rulemaking process altogether.
- Fourth, the Panel can choose not to act on *either* version of the text (original or revised), and postpone the matter until the next Panel hearing. This may be appropriate if, for example, there is additional public comment today and the Panel wants additional time to deliberate.

Phillips opened the floor for any questions from the Panel or the public. No questions from the public. Prior to a motion being made on this agenda item, Panel members expressed confusion regarding the options before them and which of the options is being recommended by CCAP staff.

Chief Counsel Phillips clarified the different options available to the Panel, depending on the version of the proposed regulation text. The difference between moving forward with Attachments 1 & 2 versus Attachments 3 & 4 is that the former (*originally* approved text) has already undergone and completed the 45-day public comment period. With the latter (*revised*

text integrating the Department's suggestions), this is a new version with new edits that have not yet gone through the public comment process.

With that clarification made, Phillips specified which of the four options CCAP staff is recommending. Staff recommends that the Panel go with the second option, that is, approving Attachments 3 & 4 (*revised* text) to go out for a 15-day public comment period. At the end of that period, the Panel will have the opportunity to adopt the revised language and proceed with finalizing the rulemaking process.

The motion being voted on, then, is to approve the *revised* regulation text (see Attachments 3 and 4) to go out for a 15-day public comment period. Chairperson Bremond confirmed this is the motion being voted on.

Motion (Moore): Approve the *revised* proposed regulation text of Rule 6014 (Attachments 3 and 4), and authorize staff to notice a 15-day public comment period. Seconded (Calderon). Melita Deci took a roll call vote on the motion. Motion passed 3-0.

5. Election of the Chairperson.

Chief Counsel Phillips stated it is time for the annual election of the Panel Chairperson for the next year.

Before conducting the election, Phillips provided an overview of election procedures. The first step is to determine any and all candidates, including self-nominations. Once the candidates are determined, each one may provide a statement or speech in support of their candidacy. Melita Deci will then take a roll call vote in which each Panel member may vote for only one candidate. If there is a tie, those procedures will be explained later.

Phillips asked for interested candidates to identify themselves and to provide a speech, if desired. Bremond self-nominated and remarked that it has been a pleasure serving as Chairperson to date. Phillips asked if anyone else was interested as a candidate. There were no other candidates.

No other comments from the Panel. No comments from the public.

Melita Deci then took a roll call vote on Bremond being re-elected as Chairperson. The Panel voted 3-0 in favor of Bremond's re-election. Bremond thanked the Panel members and CCAP staff.

6. Public Comments on Items Not on the Agenda.

Chairperson Bremond warned any comment should not involve pending or future appeals, complaints, applications, or any disciplinary actions that may come before the Panel. No comments from the public.

7. Future Agenda Items.

No comments from the Panel. No comments from the public.

8. Adjournment.

Motion (Moore). Adjourn the meeting. Seconded (Calderon). Meeting adjourned at 2:02 pm.